

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 05-CR-80891-1,2

vs.

MARY ANN COLEMAN AND
KENNETH COLEMAN

Defendants.

ORDER DEFINING COUNSEL'S PRESENTENCE REPORT RESPONSIBILITIES

IT IS ORDERED that in preparation for sentencing under Rule 32, Fed. R. Crim. P., and the applicable Local Rules, counsel will adhere to the following procedures:

- 1) **OBJECTIONS TO THE PRESENTENCE REPORT.** Counsel must *use the attached Addendum format to express any objection.* An "objection" contained in a letter, memorandum, motion, brief, etc., will be returned with instructions to present it immediately in proper format. "Page," "paragraph" and "line" in the format refer to the Presentence Report. Objections are to be sequentially numbered beginning with 1. If additional space is needed, continue on a separate sheet. The following points must be included:
 - a) ***The factual or legal basis of the objection.*** Claims that a guideline or application note has been incorrectly applied or omitted must be accompanied by a clear explanation.¹

¹ Defense counsel should particularly note the insufficiency of stating only that "the defendant disputes" some fact, or claiming that "the defendant says" or "states" something without referring to *specific* evidence in the record or discovery. If the defendant wishes to provide testimony at a hearing, that should be noted.

- b) ***Witnesses and/or exhibits.*** Provide a list of any intended witnesses including a brief statement of the substance of the testimony and an estimate of the time required to present it; attach a copy of exhibits expected to be presented.

2) **SUGGESTED CORRECTIONS OF NON-MATERIAL FACTS AND**

CALCULATIONS. Please ***do not use the Addendum format*** or the formal “objection” process merely to

- a) claim an immaterial factual or legal error, i.e., one that has no effect on guideline calculations nor forms the basis for a departure. Present such claims to the Probation Officer by letter or memorandum.
- b) point out a mechanical result or an alternate guideline calculation that depends on the resolution of a challenged factual item.

or to “object” to required PSI comments such as factors for possible departure.

Present such matters to the court in the form of a sentencing memorandum.

Provide a copy to the Probation Officer. The same deadlines apply to such memoranda as to Report objections.

- 3) **RESPONSES ARE REQUIRED.** When a party has presented a material objection that has not been accepted by the probation officer and remains for resolution by the court, ***the opposing party must file a response*** whether or not the court specifically orders a response. Provide a copy to the Probation Officer. Responses should correspond to the numbering of the objection(s), set forth the party’s position on the facts and the law, and state whether or not the party intends to present witnesses (including names and a brief statement as to substance and time

estimates as above).

- 4) **MOTIONS FOR DEPARTURE.** Any motion for a departure from the calculated range based upon Sentencing Guidelines factors, or motion for a sentencing variance based upon 28 U.S.C. § 3553(a) factors must be stated in writing and filed ***not fewer than twenty-one days before sentencing.*** Provide a copy to the Probation Officer. The opposing party must file a response ***not fewer than seven days sentencing.*** A decision on a departure motion will ordinarily be announced before sentencing. Oral argument may be invited by the court in some cases.
- 5) Any sentencing memorandum must be filed ***not fewer than twenty-one days before sentencing.***
- 6) **ALLOCUTION.** Unless otherwise permitted for reasonable cause, allocution will not exceed eight minutes for defendant's counsel, five minutes for defendant and eight minutes for government counsel.

Date: April 5, 2006

s/Robert H. Cleland
ROBERT H. CLELAND
United States District Judge

PRESENTENCE REPORT ADDENDUM

Defendant's name:

Docket #:

Date:

Objection #:

Page #:

Paragraph #:

Line(s) #:

Section I: Defendant's/Government's objection:

Attorney's signature (or)

Defendant's signature (or both)

Section II: Probation officer's comments: